



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080030

Petitioners, Peter Villa and Regan Checchio, applied to the Building Commissioner for permission to convert a portion of their existing basement into habitable floor space to be combined as part of the first floor dwelling unit per plans at 7 Netherlands Road. The application was denied and an appeal was taken to this Board.

On 3 July 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 4 September 2008, at 7:00 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 21 and 28 August 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **PETER VILLA & REGAN CHECCHIO**
Location of Premises: **7 NETHERLANDS ROAD BRKL**
Date of Hearing: **09/04/2008**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Main Library, 2nd. floor**

A public hearing will be held for a variance and/or special permit from

- 1) **5.20; Floor Area Ratio, Variance Required.**
- 2) **5.22.3.2; Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Uses, Special Permit Required.**
- 3) **8.02.2; Alteration or Extension, Special Permit Required**

of the Zoning By-Law to convert the existing basement into habitable floor space to be combined as part of the first floor per plans at **7 NETHERLANDS ROAD BRKL.**

Said Premise located in a **M-1** (apartment house) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the **ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.***

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Jonathan Book and Christina Wolfe.

The petitioner, Peter Villa, was present as was his attorney, Richard D. Paster of Paster, Rice and Castleman, 24 Adams Street, Quincy, MA 02169. Also present on behalf of the petitioner was Douglas Ruther, Registered Architect, of Douglas Ruther Architects, 183 Aspinwall Avenue, Brookline, MA 02446.

Attorney Paster described the site and neighborhood. He said that 7 Netherlands Road is one in a series of several three-story attached dwellings. There are three condominium units within the building, one unit on each level, and unfinished basement space. Parking serving the units is provided to the rear of the building, which is similar in layout to the parking serving the neighboring dwellings, including those on Aspinwall Avenue and Parkway Road.

Attorney Paster said that his clients would like to finish off a portion of the building's basement space to provide for a family room and another bedroom. Currently this area, which is located at the front of the building, is an unfinished area that, pursuant to the condominium documents, is deeded to petitioner, "expansion area". The expansion area in the basement in which the petitioner seeks to expand is directly below the first floor unit in which the petitioners reside. The basement also includes condominium common area, including unfinished storage area, laundry facilities, and mechanical equipment. He said that exterior alterations needed to convert the basement expansion area are minimal, consisting only of new windows at the basement level, and a new vent and compressor unit located at the rear.

Mr. Ruther, the architect, reported that the Planning Department noted that there may be an emergency egress issue from the proposed basement level bedroom. Mr. Ruther said that the petitioners did not want to change the windows in the bay facing the street for architectural reasons. Mr. Ruther said he had prepared a rough set of revised drawings delineating the changes to address the concerns identified by the Planning Department. He said they could accommodate emergency egress from the bedroom by altering the condominium common area in the basement and providing a rated corridor to the back stairwell leading to the outside of the building. He also reported that since they were doing renovations to the basement floor level, applicable fire and safety code requires a secondary means of egress from the basement common

area. Mr. Ruther said that the new secondary means of egress would be provided with the installation of a new door at the northeastern corner of the basement level accessed by a newly created hallway and leading directly to grade. He said that some realignment of the common space would be required and that any gain in gross square footage relating to Gross Floor Area (FAR) would still be under the 120% allowed under the Zoning By-Law. Mr. Villa, the petitioner, said that the newly created secondary means of egress would lead directly to the parking area. Mr. Shepard, Building Commissioner, said that some type of structure, perhaps bollards, would be required to keep parked vehicles from potentially blocking the new door or the creation of a safety hazard.

The Chairman asked whether anyone was present who wished to speak in favor or opposed to the proposal. No one responded.

Lara Curtis, Planner, delivered the findings of the Planning Department.

Section 5.20 – Floor Area Ratio

Section 5.22.3.b.2 – Exceptions to Maximum Floor Area Ratio Regulations for Residential Units: The Board of Appeals by special permit may grant an increase in floor area of up to 20 percent above permitted gross floor area.

FLOOR AREA

	Required	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.0 100%	1.08 108%	1.19 119%	Special permit*
Floor Area (s.f.)	4,637	4,999	5,540	

* See Section 5.22.3.b.2 above.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter or extend a non-conforming condition.

Ms. Curtis reported that the Planning Board is supportive of the proposal to finish a portion of the basement floor area for use by the first floor unit. The alterations to the exterior are minimal and will not have a detrimental effect on neighboring properties. The Board would like to emphasize that the floor plans should be reviewed carefully by the Building Department for

compliance with fire prevention, but otherwise, the plans are a reasonable proposal to expand the first floor unit. Therefore she said, the Planning Board recommends approval of the proposal and plans, prepared by Douglas Ruther Architects, and last dated May 27, 2008, subject to the following conditions:

1. Prior to issuance of a building permit, if the applicant desires to change the size of the basement windows, final elevations of the building shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that when initially presented, it looked like the proposed expansion could, at some point, become another unit. However, he has since discovered that the space is in fact deeded to the first floor condominium and therefore cannot be a separate dwelling unit. Mr. Shepard said that the installation of bollards outside the new proposed means of egress would prevent blockage of the door. He said that the Building Department is not opposed to the granting of relief or to the conditions recommended by the Planning Board.

After asking the other Board members whether they had any questions and hearing that they did not, the Chairman asked whether there were any other expansion rights within the building that benefit any other condominium owners, specifically, basement, attic or any other space. He said the granting of the requested relief would effectively bar any expansion by other owners. Attorney Paster responded that the Condominium documents do not spell out other expansion possibilities. Mr. Shepard pointed out that the 7 Netherlands Condominium Trust in a memo

dated 17 May 2008 accepted the plan for the renovation. Mr. Geller requested clarification on what other changes are proposed, other than the new door, to the exterior of the building. The architect responded that there were no changes proposed to the front elevation of the building and that fresh air intakes would be added to the rear to accommodate the combustion air required by the mechanical equipment in the basement. An air conditioning condenser will be installed under a deck on the rear of the building as well. Mr. Geller reminded the petitioner that should they be granted the requested relief, pursuant to Section 5.22.1.a of the Zoning By-Law there can be no further subdivision of the expansion area incorporated into the petitioner's unit. The petitioner responded that he understood that provision of the Zoning By-Law.

Mr. Book said he was in favor of granting the requested relief with the understanding that the expansion would meet all of the requirements of the Building Code. Ms. Wolfe said that she was concerned whether the other condominium owners understood the implications of the granting of the requested relief. Mr. Shepard responded that the Condominium Trustees approved of the plan and that the other owners as well as everyone within 300' of the subject property were provided notice of the hearing and no one was in attendance. Mr. Paster stated that approval by two-thirds of the condominium owners is necessary to undertake the renovations and that his client owns a 40% interest in the Trust.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the conditions of Sections 5.22.3.b.2, 5.09 and 9.05 of the Zoning By-Law and Section 8.02.2 of the Zoning By-Law have been satisfied and that it is desirable to grant a Special Permit in accordance with said **Section 5.22.3.b.2**, exceptions to maximum floor area ratio, and said **Section 8.02.2**, alteration or extension of a pre-existing, non-conforming structure. The Board makes the following findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to issuance of a building permit, if the applicant desires to change the size of the basement windows, final elevations of the building shall be submitted to the Assistant Director for Regulatory Planning for review and approval. Also, a final elevation of the rear of the building indicating the secondary means of egress from the common area shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. A revised floor plan indicating the secondary means of egress from the Condominium building common area in the basement as well as the bollards to protect the new doorway from blockage, shall be submitted to the Building Commissioner for review and approval.**
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals

Filing Date: _____



Jesse Geller, Chairman

Filing Date: September 18, 2008

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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08 SEP 15 AM 11:38